No. 93-517, 527, 539

In The

Supreme Court of the United States

October Term, 1993

BOARD OF EDUCATION OF THE KIRYAS JOEL VILLAGE SCHOOL DISTRICT,

Petitioner,

v.

LOUIS GRUMET AND ALBERT W. HAWK,

Respondents.

[Caption Continued On Inside Cover]

On Petition For A Writ Of Certiorari To The New York State Court Of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

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BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT,

Petitioner,

v.

LOUIS GRUMET and ALBERT W. HAWK,

Respondents.

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Petitioner,

v.

LOUIS GRUMET and ALBERT W. HAWK,

Respondents.

Counterstatement of Question Presented

Whether the New York State Court of Appeals correctly held that Chapter 748 of the Laws of 1989 entitled an act to establish a separate school district in and for the Village of Kiryas Joel, Orange County, violates the Establishment Clause of the First Amendment of the United States Constitution?

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RESPONDENTS' BRIEF IN OPPOSITION

Jurisdiction

This Court's jurisdiction is discretionary, under 28 U.S.C. §1257(a).

Summary of Argument

Respondents respectfully request that the Court deny the petition for a writ of certiorari, which seeks a review of a decision of the New York State Court of Appeals holding that Chapter 748 of the Laws of 1989 of New York State violates the Establishment Clause of the First Amendment to the United States Constitution.

The decision below correctly invalidated the statute under the principles enunciated by this Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and this Court's Establishment jurisprudence. The statute represents an excessive and constitutionally impermissible accomodation of religious beliefs. The unique facts of the case make it an inappropriate vehicle for revisiting the *Lemon* test. The issues have been fully and correctly resolved by New York's highest court. Review by this Court is therefore unnecessary.

Counterstatement of the Case

This is a facial Establishment Clause challenge to Chapter 748 of the Laws of 1989 of the State of New York ("Chapter 748") which provides for the formation and existence of a publicly funded school district for the

Village of Kiryas Joel ("the Village") for the purpose of providing an exclusive environment in which that community can educate its children with disabilities in accordance with Satmar religious precepts of exclusivity[1]. Claims the school district is presently operating in a secular manner constitute an "as applied" argument not properly before this Court.

Prior to the establishment of a separate school district for the residents of the Village, special education and related services were always available and offered to the children of Kiryas Joel within the public school facilities of petitioner Monroe-Woodbury Central School District ("Monroe-Woodbury"), the school district to which the residents of the Village of Kiryas Joel belonged before the Kiryas Joel Village School District ("KJVSD") was created.[2] However Village residents requested and obtained

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[1] Assertions by petitioner Kiryas Joel Village School District ("KJVSD") that there is no "religious tenet prescribing separatism" (KJVSD Petition, p.5, fn 1) are unsupported by the record, and were raised by the KJVSD for the first time during oral argument before the Court of Appeals. They are also contrary to judicial finding in previous cases involving the Satmar community. (*Parents' Assn. of P.S. 16 v. Quinones*, 803 F.2d 1235 (2d Cir. 1986); *Bollenbach v. Bd. of Educ. of the Monroe-Woodbury Central School Dist.*, 659 F.Supp. 1450, 1453 (SDNY 1987).

[2] That Monroe-Woodbury appears as a petitioner before this Court is immaterial to determining the constitutional validity of Chapter 748. Just as the benediction in *Lee v. Weisman*, ___ U.S. ___, 112 S. Ct. 2649 (1992), was unconstitutional despite the good faith efforts of the school to make it acceptable, the support of Monroe-Woodbury does not transform an otherwise unconstitutional accommodation of Satmar religious beliefs into permissible governmental action. As this Court explained in *Lee*, it is the legitimacy of the undertaking itself which determines a violation of the Establishment Clause. (*Lee*, supra at 2656).

from the New York State Legislature a separate school district because of their religious need to remain culturally isolated.

Although the KJVSD was allegedly established to provide services to approximately one hundred Kiryas Joel resident children with disabilities, in 1990, during the first school semester the KJVSD opened, only 33 pupils were enrolled in and receiving services from the district. Of these, 20 were non-residents of the Village, but all were Satmar Hasidim. Three of the non-resident students were residents of petitioner Monroe-Woodbury, 17 of the non-resident students were being bused from a school district in another county. During the 1992-93 school year, the KJVSD provided special education and related services on a full-time basis to only 13 resident students and 29 non-resident students. The district also offered services on a part-time basis to 95 resident students attending the Village's parochial schools, but the vast majority of those students were only receiving one (1) period of special education services per day. (Affidavits of Hon. Thomas Sobol, and Gregory Illenberg, previously submitted to this Court with respondents' opposition to petitioners' Application for Extension of Stay, and reprinted in the Appendix at App. 1 and App. 6, respectively).

About the Satmar Hasidim

The Satmar Hasidim who comprise the population of the Village of Kiryas Joel are members of an Orthodox Jewish sect. Satmar Hasidim believe in a literal interpretation of Scripture and the teachings of the Torah and

the Talmud (the book of Jewish law and tradition) which serve to guide every aspect of life from dress to diet. Central to Satmar Hasidic beliefs and way of life is the drawing of cultural boundaries between themselves and the rest of society. (Affidavit of Israel Rubin, reprinted in the Appendix at App. 13). To protect themselves against undesirable acculturation, Satmar Hasidim do not allow their children to attend school with children who belong to cultures deemed undesirable for Satmarer. (App. 17; *Parents' Assn. of P.S. 16 v. Quinones*, 803 F.2d 1235 (2d Cir. 1986)).

Hasidic sects, including the Satmar, are led by their own religious leader known as the Rebbeh, who is traditionally the most powerful and influential man in the Satmar community. The Rebbeh oversees almost every aspect of Hasidic life. (App. 15-16). Those questioning his authority risk expulsion from the community's congregation, and ostracism by the other community members. For instance, the only candidate running for the KJVSD board of education without the endorsement of the Rebbeh during the school district's first election was expelled from the Village's main congregation, and his children were expelled from the Village's religiously affiliated schools after this candidate refused to renounce his candidacy. (See, *Waldman v. United Talmudic Academy*, 147 Misc.2d 529 (1990); Record on Appeal to the Court of Appeals; pp. 407; 436-439; 470-480; 592-641).

About the Village of Kiryas Joel

The Village of Kiryas Joel is comprised of a culturally, ethnically and religiously isolated population. (*Board of*

Education of the Monroe-Woodbury CSD v. Wieder, 72 NY2d 174, 179 (1988)). In addition to separation from the outside community, Satmar religious beliefs also dictate separation of the sexes.[3] (*Parents Assn. of P.S. 16 v. Quinones*, supra; *Bollenbach v. Board of Education of the Monroe-Woodbury Central School District*, 659 F.Supp. 1450 (SDNY 1987)).

Not unlike the creation of the KJVSD, the incorporation of the Village of Kiryas Joel followed heated and litigated controversy, at that time over the zoning code violations committed by builders constructing dwellings for the Satmarer in a subdivision located within the Town of Monroe. (Record on Appeal to the Court of Appeals, pp. 408-410; 517-525). Accusing the Town of persecuting Hasidic Jews, the Satmarer presented the Monroe Town Board with a self-incorporation petition, under the provisions of New York's Village Law. The incorporation of the new village allowed the Satmarer to avoid the Town of Monroe's zoning code and to enact their own zoning laws consonant with their specific requirements. (Record on Appeal to the Court of Appeals, p. 523).

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[3] Contrary to the implications of petitioners' assertions that KJVSD students are not separated by sex in accordance with Satmar beliefs, respondents have never asserted in support of their challenge to Chapter 748 that handicapped Satmar children must be separated by sex when they are receiving instruction. Indeed, the affidavit of Israel Rubin, a preeminent scholar on the Satmar community, indicates separation of the sexes is not necessarily required when handicapped Satmar children are being provided with educational instruction. (App. 19).

Prior Litigation Concerning Services to Satmar Hasidic Students

The constitutional problems inherent in the provision of publicly-funded educational and related services to Satmar children in a manner consistent with their religious beliefs and culture have been the subject of judicial review not only in the present case, but also in previous cases including one case before the New York State courts and two separate federal court cases.

In *Parents' Assn. of P.S. 16 v. Quinones* (803 F.2d 1235 (2d Cir. 1986)), the New York City Board of Education adopted a plan to close off nine classrooms of a public school and to dedicate the enclosed area to the exclusive use of Satmar Hasidic girls. (803 F.2d at 1237). The Second Circuit Court of Appeals found the plan to separate the Hasidic students **from all other public school students** was an unconstitutional accommodation of Satmar Hasidic religious beliefs and traditions. (803 F.2d at 1241). According to the *Quinones* court, the plan created a symbolic link between the state and the Hasidic sect which was likely to be perceived by the Hasidim and others as governmental support for the separatist tenets of the Hasidic faith. To impressionable young minds, the challenged plan would appear to endorse not only separatism but the derogatory disdain of the Hasidim for other cultures. (*Id.*)

The *Quinones* decision referenced statements by members of the Satmar community which reflect the intrinsic separatist position of that Hasidic community,

> [the Satmar Hasidim] struggle very hard to maintain [their] belief and [their] culture . . . [They] want [their] children separate . . . The issue goes to the heart of the Orthodox tradition, which requires the separation of males and females for virtually every activity, including schooling, and encourages isolation from other cultures. If we have our kids learning with them, they'll be corrupted . . . We don't hate these people, but we don't like them. *We want to be separate. It's intentional.* (803 F.2d, supra, at 1238) (Emphasis added).

In *Bollenbach v. Bd. of Educ. of the Monroe-Woodbury Central School Dist.*, 659 F.Supp. 1450 (SDNY 1987), Monroe-Woodbury, responding to requests by Kiryas Joel residents, removed female bus drivers from transportation runs servicing the Village's male Hasidic students to their religious school after being advised that the male students could not board school buses driven by female drivers nor take their instructions because of Satmar religious tenets restricting interaction between the sexes. (659 F.Supp. at 1453). The United States District Court for the Southern District of New York determined that the assignment of only male drivers on runs servicing male Village students had the primary effect of advancing religious beliefs and created excessive entanglement of government with religion in violation of the Establishment Clause of the First Amendment to the United States Constitution. (659 F.Supp. at 1455-66).

In *Board of Education of the Monroe-Woodbury CSD v. Wieder*, 134 Misc.2d 658 (1987); 132 AD2d 409 (2d Dept. (1987)); 72 NY2d 174 (1988), the New York State courts specifically reviewed the issue of whether the Village

handicapped children were entitled to obtain publicly-funded special education and related services in an environment separate from non-Satmar students, in conformity with Satmar separatist beliefs and custom. Initially, Monroe-Woodbury provided the services at an annex to one of the Village's private schools (72 NY2d 174, 180). However, reacting to this Court's decisions in *Aguilar v. Felton* (473 U.S. 402 (1985)) and *School Dist. of City of Grand Rapids v. Ball* (473 U.S. 373 (1985)), Monroe-Woodbury determined it could no longer provide the services at the annex and proceeded to place the affected children in classes within its public schools, based on individual evaluations conducted by the Monroe-Woodbury Committee on the Handicapped (COH)[4]. Several months thereafter, the Village parents refused to permit their children to continue attending such schools, (72 NY2d at 180; 132 AD2d 412), **despite Monroe-Woodbury efforts to integrate the Satmar children into the public school environment and to accommodate the parents, including Yiddish-speaking aides and bilingual reports, and reports that the children who actually attended the programs in the public school facilities continued to progress.** (72 NY2d at 181).

New York State Supreme Court, Orange County, in its *Wieder* decision directed Monroe-Woodbury to provide the Village's children with disabilities with special education and related services at a location not physically or educationally identified with the Village but, nonetheless,

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[4] Pursuant to Chapter 642 §2 of the Laws of 1987, the term "Committee on the Handicapped" was replaced by the term "Committee on Special Education".

reasonably accessible to the parochial school children. (134 Misc.2d 658, 662-663). The Appellate Division, Second Department, reversed the lower court's decision, ruling, *inter alia*, that the ordering of services at a "neutral site" by the Orange County Supreme Court ran afoul of the Establishment Clause because,

> the record demonstrates that in reality, the mobile unit or other facility will be provided for the use of the handicapped children of Kiryas Joel not because of the nature of their handicaps, but because of their Hasidic faith and sociocultural background . . . [and] their parents' desires to keep them out of the public schools and insulated from students of dissimilar religious and cultural backgrounds. (132 AD2d, supra, at 416; see, 72 NY2d, supra, at 188).

In so ruling, the Appellate Division, Second Department, expressly rejected the Village residents' reliance on this Court's decision in *Wolman v. Walter*, 433 U.S. 229 (1977), which case petitioners cite again in support of their petition for a writ of certiorari. The Appellate Division, Second Department, found, that in contrast to the legislative scheme upheld in *Wolman*, the remedy imposed by the Supreme Court, Orange County, was based on that court's "concern for the religious and social practices of the Hasidim" rather than upon a consideration of totally secular factors. (132 AD2d 415).

Reviewing the Appellate Division's *Wieder* decision, the New York Court of Appeals did not reach the constitutional issue limiting itself, instead, to interpreting whether New York State Education Law required Monroe-Woodbury to provide special education services to

the children of Kiryas Joel only in its public schools, or allowed it to provide the services at the Village's religious schools, or even at a neutral site. (72 NY2d at 189-90). Ruling that New York law required neither, the Court of Appeals noted "[it had] no occasion to . . . determine where particular services could be rendered in conformity with constitutional principles" because the action before it "pose[d] only the abstract question [of] whether services *must* be furnished in public schools . . . or *must* be furnished separately . . . " (72 NY2d at 189 fn 3). The Court of Appeals further noted, however, that on the record before it, "[the Village residents'] statutory entitlement to special services does not carry with it a constitutional right to dictate where they must be offered" (72 NY2d at 188).

Establishment of the Kiryas Joel Village School District

Subsequent to the Court of Appeal's *Wieder* decision, the New York State Legislature adopted Chapter 748 providing for the creation and maintenance of the KJVSD. This separate school district is entirely located within the Village of Kiryas Joel, (Record on Appeal to the Court of Appeals, p. 420), and was purportedly established exclusively to provide special education and related services to the children of the Village, with the non-handicapped student population "expected to continue to attend private schooling currently provided in the Village." (Record on Appeal to the Court of Appeals, p. 126).

However, the act itself attributes to the KJVSD "all the powers and duties of a union free school district under the provisions of the [New York] education law,"

which are vast and enable the district to provide services to nondisabled students, as well. (Record on Appeal to the Court of Appeals, p. 90; 81 NY2d 518, 537-538 (Kaye, J. concurring).) Indeed, during the pendency of the present case, the KJVSD submitted plans to the New York State Education Department of a facility it proposed to purchase to expand its instructional program to include regular kindergarten classes, (Affidavits of Hon. Thomas Sobol and Robert Lavery, submitted to the New York State Appellate Division in support of respondents' Motion to Vacate Statutory Stay, and reprinted in the Appendix at App. 20 and App. 23, respectively), even though memoranda contained in the statute's bill jacket also indicate that any non-handicapped student residing within the KJVSD desiring a public school program would be 'tuitioned out' to the Monroe-Woodbury school district. (Record on Appeal to the Court of Appeals, p. 126).[5]

As a full-fledged union free school district under New York State Education Law, the KJVSD is also responsible for providing the general non-handicapped student population attending the Village's religious schools with certain specific services such as textbooks, health and welfare services and transportation. The Village's parochial schools are part of the educational system established to provide education to Satmar students in a manner that preserves, in full, Satmar culture in America, and serve as the vehicle for inculcating in Satmar children the religious standards of their parents.

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[5] The KJVSD has placed these plans in abeyance pending final determination of this case.

Satmar religious schools "serve primarily as a bastion against undesirable acculturation, as a training ground for Torah knowledge in the case of boys, and in the case of girls, as a place to gather knowledge they will need as adult women." (*Board of Education of the Monroe-Woodbury CSD v. Wieder*, 72 NY2d at 180, citing Rubin, Satmar: An Island in the City, at 140 [Quadrangle 1972]; App. 17-18). Thus, education comes close to being an adjunct to religion. "English" or secular educational programs, are offered only as necessary to meet the minimum state requirements for qualifying as an approved school under the State's compulsory education laws. Textbooks are censored in advance, and the borrowing of public library books is forbidden because of their uncensored content. Nonacademic subjects such as art, music and physical education are absent from Satmar schools. (Record on Appeal to the Court of Appeals, pp. 494-496; App. 17-18).

In establishing the KJVSD as a full-fledged union free school district to exclusively provide educational services to Village children with disabilities, the New York State Legislature ignored warnings by counsel to the New York State Education Department, the state agency responsible for overseeing implementation of Chapter 748, that the establishment of the KJVSD contravened separate New York State statutory provisions which preclude union free school districts, such as the KJVSD, from operating separate schools solely for students with disabilities.[6] (Record

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[6] The New York State Education Department was one of the original state defendants in this action. Pursuant to a stipulation and order of Supreme Court, Albany County (Kahn, Lawrence E., J.), dated August 21, 1990, the action was dismissed against

on Appeal to the Court of Appeals p. 102). The New York State Legislature also contravened the State's Master Plan for School District Reorganization in New York State which, pursuant to the New York State Education Law, promotes the reorganization and consolidation of smaller school districts to encourage economy and efficiency in the State's public education system. (Record on Appeal to the Court of Appeals p. 504).

The establishment of the KJVSD as a full-fledged union free school district is also in conflict with the provisions of Article 81 of the New York State Education Law which specifically authorize the establishment of "special act" school districts designed to provide education to children with disabilities exclusively. Unlike the KJVSD, "special act" school districts do not serve a general student population, and cannot refuse placement of nonresident handicapped children from other school districts. (Record on Appeal to the Court of Appeals, pp. 420-421).

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the original state defendants, including the New York State Department of Education, the New York State Board of Regents, the New York State Comptroller and the District Superintendent for the Orange-Ulster Board of Cooperative Educational Services. The KJVSD and Monroe-Woodbury were added as party-defendants by order of Supreme Court, Albany County (Kahn, Lawrence E., J.), dated May 10, 1990. The New York State Attorney General continues to appear as a statutory defendant pursuant to the laws of New York State, albeit representing a position contrary to that of the State Education Department which has supported respondents' position throughout this litigation by submitting affidavits containing information relevant to the issues presented in this case.

Education of Children with Disabilities

The education of children with disabilities in New York State is governed by the Individuals with Disabilities Education Act (IDEA)[7], 20 U.S.C. §1400 *et seq.* and its implementing regulations, 34 CFR Part 300 et seq.; the Rehabilitation Act of 1973, §504 (29 U.S.C. §§794-794(c)) and its implementing regulations at 34 CFR 99; and by Article 89 of the New York State Education Law, and its accompanying regulations, 8 NYCRR Part 200, as well as the general requirements applicable to all school districts as defined in Part 100 of the Commissioner's Regulations. Pursuant to these statutory and regulatory provisions, school districts are required to provide to children with disabilities a "free appropriate public education" in conformity with an "individualized education program" (IEP), tailored to meet the unique needs of the individual child, **defined in accordance with the child's specific disability.** (20 U.S.C. §§1400(c); 1401(18)). All students with disabilities are entitled to receive a free appropriate education in the district where they reside.

Both federal and state law require that educational services be provided in the "least restrictive environment," appropriate to the needs of the student. (20 U.S.C.

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[7] The Individuals with Disabilities Education Act (IDEA) was formerly known as The Education of the Handicapped Act (EHA), Pub. L. No. 91-230, 84 Stat. 121. Along with the title change pursuant to amendments dated October 30, 1990, and codified at 20 U.S.C. §§1400-1485, the term "children with disabilities" was substituted for the term "children with handicapping conditions."

§1412(5)(B); 34 CFR 300.550(b); 8 NYCRR 200.6(a)(1)). This requires that "special classes, separate schooling, or other removal of handicapped children from the regular educational environment . . . occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (20 U.S.C. §1412(5)(B); 34 CFR 300.550(b)(2); 8 NYCRR 200.6(a)(1); 8 NYCRR 200.1)). The inquiry is whether the goal of the IEP can be met within a regular education program with supplementary aids and services. (*Id.*). Therefore, it is a violation of state and federal law to remove a pupil from regular classroom instruction unless it is determined that, even with support services, the child would not benefit from instruction in the regular classroom. In addition, students who cannot benefit from instruction in a regular classroom, must, nonetheless, be afforded the opportunity to interact with their non-handicapped peers in nonacademic areas, i.e., recess, lunch, music, art, gym, etc. (34 CFR 300.550(b)(2); 8 NYCRR 200.1(t)(1)(2)).

There is no indication that the entire student population of the KJVSD is incapable of benefitting from regular classroom programs with the use of supplementary aids and services. Because the KJVSD was purportedly established to educate only students with disabilities, it is by design unable to provide its students with disabilities the opportunity to be placed in regular education classes with non-handicapped children, or to interact in nonacademic areas with their non-handicapped peers. (Record on Appeal to the Court of Appeals at p. 512).

The Decisions Below

Respondents commenced an action in New York State Supreme Court, Albany County, seeking a declaration that Chapter 748 was constitutionally infirm under both the Federal and State Constitutions. Applying the tripartite test established by this Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the lower court ruled the statute violated all three prongs of that test. In its decision, the lower court further noted that:

> [t]he intent of the Legislature and Executive to be responsive to the citizens of Kiryas Joel is laudatory and reflects the political process straining to meet the parochial needs of a religious group. However, their action violates the First Amendment which prohibits legislation which promotes the establishment of religion. The Satmar Hasidic sect enjoys religious freedom as guaranteed by the very First Amendment that they are now seeking to circumvent. This short range accomplishment could in the long run jeopardize the very religious freedom which they now enjoy. (*Grumet v. New York State Education Dep't.* 151 Misc.2d 60, 65 (1992)).

Affirming the ruling of the lower court, the Appellate Division, Third Department, determined that:

> [t]he challenged statute . . . was designed not merely to provide special education services to the handicapped children of the Village, but to provide those services within the Village, so that the children would remain subject to the language, lifestyle and environment created by the community of Satmarer Hasidim and avoid mixing with children whose language, lifestyle and environment are not the product of that religion.

> The dissent finds a secular purpose for the statute in that it would provide the handicapped children of the Village with the publicly supported, secular special educational services they need and to which they are entitled, but as previously noted those services were already available to all of the handicapped children of the Monroe-Woodbury District, including the handicapped children of the Village. Thus, the only secular need for the statute recognized by the dissent, did not, in fact, exist. (*Grumet v. Board of Educ. of the Kiryas Joel Village School Dist.*, 187 AD2d 16, 21 (1992).)

The Appellate Division further held that the statute violated the second prong of *Lemon* because of the inherent

> symbolic impact of creating a new school district coterminous with a religious community to provide educational services that were already available in an effort to resolve a dispute between the religious community and the school district within which the community was formally located, a dispute based upon the language, lifestyle, and environment of the community's children created by the religious tenets, practices and beliefs of the community . . . The record . . . contains uncontradicted evidence of a direct link between the language, lifestyle and environment of the community's children and the religious tenets, practices and beliefs of the community. (187 AD2d at 25).

Having concluded the statute violated the first and second prong of *Lemon*, the Appellate Division saw no need to address whether the statute also violated the third prong. (187 AD2d at 23).

In the decision below, the New York State Court of Appeals similarly determined that:

> [b]ecause special services are already available to the handicapped children of Kiryas Joel, the primary effect of Chapter 748 is not to provide those services, but to yield to the demands of a religious community whose separatist tenets create a tension between the needs of its handicapped children and the need to adhere to certain religious practices. Regardless of any beneficent purpose behind the legislation, the primary effect of such an extensive effort to accommodate the desire to insulate the Satmarer and Hasidic students inescapably conveys a message of governmental endorsement of religion. Thus, a core purpose of the Establishment Clause is violated. (*Grumet v. Board of Educ. of the Kiryas Joel Village School Dist.*, 81 NY2d 518, 531 (1993)).

In so ruling, the Court of Appeals expressly rejected

> the dissent's assertion that 'no message of endorsement for Satmar theology or its particular separatist tenets * * * can fairly be inferred' (dissenting opn. at 553) from a statute that creates a new school district within an existing school district and establishes a board of education, composed entirely of residents of the Village of Kiryas Joel who are of the Satmarer Hasidic religious sect. Here, unlike in *Zobrest* (supra) the statute creating a school district and establishing a board of education coterminous with the Satmarer Hasidic Village of Kiryas Joel cannot be viewed as part of a general government program. Rather, as stated, the statute represents a long-standing conflict between the

> Monroe-Woodbury School District and the Village of Kiryas Joel, whose population are all members of the same religious sect. Thus, it cannot be said that by the creation of the Kiryas Joel Village School District, the government is offering 'a neutral service * * * as part of a general program that is "in no way skewed towards religion" '. (81 NY2d at 530).

Having concluded that the second prong of *Lemon* was violated, the Court of Appeals determined it need not address the first or third prong of *Lemon*. (81 NY2d at 531).

Reasons for Denying the Writ

1. The decision of the New York State Court of Appeals is consistent with this Court's Establishment Clause jurisprudence.

A. *Lemon v. Kurtzman*

Chapter 748 of the Laws of 1989 was declared unconstitutional by the court below, as "convey[ing] a message of governmental endorsement of religion," in violation of a core purpose of the Establishment Clause. *Grumet v. Board of Educ. of the Kiryas Joel Village School Dist.*, 81 NY2d 518 (1993). The New York State Court of Appeals grounded its decision on the principles enunciated by this Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

Although often maligned, this Court has not overruled its tripartite test established in *Lemon* for determining the constitutionality of governmental action under the Establishment Clause. The Court of Appeals properly relied upon and correctly applied the *Lemon* test.

To survive constitutional scrutiny under *Lemon*, legislation must, 1) have a secular purpose; 2) have a principal or primary effect that neither advances nor inhibits religion; and 3) neither may it foster an excessive governmental entanglement with religion. The Court of Appeals below properly determined that Chapter 748 failed the second prong of *Lemon* which concerns itself with whether "irrespective of [its] actual purpose, [governmental action] in fact conveys a message of endorsement of religion" (*Lynch v. Donnelly*, 465 U.S. 668, 690 (1984) (O'Connor, J., concurring)); (See, *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter*, 49 U.S. 573, 57 USLW 5045, 5050 (1989) citing *School Dist. of City of Grand Rapids v. Ball*, 473 U.S. 373, 389 (1985); *Wallace v. Jaffree*, 472 U.S. 38, 70 (1985) (O'Connor, J. concurring); *Parents' Assn. of P.S. 16 v. Quinones*, 803 F.2d 1235 (2d Cir. 1986)). Moreover, although not addressed by the Court of Appeals, Chapter 748 also fails the first and third prong of *Lemon* for the reasons set forth in the two lower court decisions, as well as the concurring opinion of Judge Hancock at the Court of Appeals (81 NY2d at 540-545).

Chapter 748 fails the second prong of *Lemon* because the cultural needs of the children of Kiryas Joel are inextricably linked to fundamental Satmar religious beliefs which define the essence of Satmar culture, and dictate, in relevant part, that Satmar children be educated separate and apart from non-Satmar students. (See, *Board of Education of the Monroe-Woodbury CSD v. Wieder*, 72 NY2d 174; *Parents' Assn. of P.S. 16 v. Quinones*, 803 F.2d 1235). The only reason why Village residents required a separate school district was because of their religious need to

remain culturally isolated. Had the dispute between Village residents and Monroe-Woodbury truly been over the appropriateness of services being provided by Monroe-Woodbury, Village parents could have exercised their statutory right to an administrative review of their secular concerns, and to judicial review of any adverse determination produced by the administrative appeal, rather than necessitating the establishment of the KJVSD. (*Grumet v. Board of Educ. of the Kiryas Joel Village School Dist.*, 187 AD2d at 24; 34 CFR 300.403(b); 34 CFR 300.500-300.514; 8 NYCRR 200.5; Record on Appeal to the Court of Appeals, p. 795). Thus, the primary effect of the contested statute is not to provide Village children with special education services, but rather to involve the state in sponsorship of Satmar separatist precepts.

B. *Wisconsin v. Yoder*

To the extent petitioners argue the Court of Appeals erred in refusing to uphold the constitutionality of Chapter 748 as a proper accommodation of the Satmar religious culture similar to that afforded the Amish in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), this Court most recently explained in *Lee v. Weisman*, "[t]he principal that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause" (___ U.S. ___, 112 S.Ct. 2649 at 2655). Indeed, the state may limit conduct grounded in religious beliefs where it is essential to accomplish an overriding governmental interest, irrespective of the substantial impact such regulation would have upon the practice of one's religious beliefs. (*Bob Jones University v. United States*, 461 U.S. 574 (1983); *United*

States v. Lee, 455 U.S. 252 (1982); see, *Thomas v. Review Board*, 450 U.S. 707, 718 (1981); *Sherbert v. Verner*, 310 U.S. 398, 402-403 (1963)).

In the present action, government has two compelling interests not to accommodate Satmar separatist beliefs. First, such an accommodation would contravene the basic purpose of our system of public education to prepare students for citizenship in a heterogeneous democratic society because the state would be directly involved in promoting separatism rather than pluralism. (*Bethel School District No. 403 v. Fraser*, 106 S.Ct. 3159 (1986)); Record on Appeal to the Court of Appeals, p. 101; *cf. Wisconsin v. Yoder*, 406 U.S. 205. Second, it would advance Satmar religious precepts in violation of the Establishment Clause. (See, *Parents' Assn. of P.S. 16 v. Quinones*, 803 F.2d 1235). Kiryas Joel residents may believe in and practice an insular way of life, but the state may not undertake action, such as the one contested herein, which in essence transforms government into an active sponsor of religious beliefs.

In addition, the *Yoder* case is clearly distinguishable from the present case. The accommodation afforded the Amish did not contravene the principles which serve as the foundation of public education. It merely involved the exemption of Amish children from compulsory attendance requirements so that they could be educated in the ways necessary to enable them to sustain the Amish agrarian way of life, essential to the physical survival of the community. Therefore, the compelling state interest in upholding Wisconsin's compulsory education laws did not outweigh the free exercise right of the Amish to have their children excused from school attendance after the

children had attended public school through the eighth grade.

In contrast, the accommodation of Satmar separatist beliefs in the manner contested herein violates the very foundation of our system of public education. It also requires an affirmative and substantial act of government, not present in *Yoder*, which serves to advance religious beliefs in violation of the Establishment Clause. Therefore, in the present case, the compelling state interests involved outweigh the free exercise rights of the residents of the Village.

Respondents further submit that the KJVSD cannot disclaim insularism as a Satmar religious precept, and at the same time contend that the accommodation of the religious reasons underscoring their refusal to accept publicly funded educational services at a location outside their community merely has the effect of lifting a burden on the free exercise of religion.

C. *Wolman v. Walter*

Petitioners' reliance on this Court's decision in *Wolman v. Walter*, 433 U.S. 229 (1977), and its progeny, upholding the constitutionality of accommodating parental requests that public educational services be provided to students attending non-public schools at "neutral sites" is misplaced. As Monroe-Woodbury effectively argued before the Appellate Division, Second Department, in the *Wieder* case discussed above, the residents of the Village never requested a truly "neutral" site from Monroe-Woodbury. Their request was for a site apart

from the Village's parochial schools but where their children would still be educated *exclusively* with other Hasidic children, thereby advancing the separatist religious precepts of the Satmar Hasidim. That is exactly what the statute herein has granted the residents of the Village, a site which is not truly neutral, but rather, a site where, by design, their children can receive publicly-funded special educational services exclusively with other orthodox jewish children. As determined by Supreme Court, Albany County, in the decision affirmed below, in providing for the establishment of the KJVSD "the Executive and the Legislature . . . [took] the extraordinary measure of creating a governmental unit to meet [the Village residents'] parochial needs" (151 Misc.2d at 64). That the KJVSD *may* admit students from other school districts is not to the contrary for, under the New York State Education Law, the KJVSD is not obligated to do so. It is obligated to educate only its residents.

Indeed, the Court of Appeals determined below that this Court held in *Wolman* that:

> 'considerations of safety, distance, and the adequacy of accommodations' could justify a public school's provision of remedial services in mobile units located on neutral sites near non-public school premises (see, *Wolman v Walter*, 433 US at 247, n 14, supra). Contrary to the assertions by the dissent, the legislation at issue in this case does not effect a " 'unit on a neutral site' " serving only sectarian pupils (see, dissenting opn at 554). Rather, the statute creates an entirely new school district coterminous with the Satmarer Hasidic community of Kiryas Joel and establishes a school board composed of members

> elected by the voters of the Village. This goes beyond any directive by the Supreme Court or this Court for the provision of special services to handicapped children at a neutral site (see, *Wolman v Walter*, 433 US 229, 248, supra; *Board of Educ. v Wieder*, 72 NY2d 174, 188, supra). (81 NY2d at 530).

2. The Decision of the New York State Court of Appeals is consistent with this Court's holdings concerning accommodation under the Establishment Clause.

The New York State Court of Appeals properly refused to find Chapter 748 constituted a constitutional accommodation of Satmar beliefs and culture. The alleged accomodation effected by the New York State Legislature herein violates the Establishment Clause because as stated by Judge Kaye in her concurring opinion below,

> the legislative response plainly went further than necessary to resolve the problem . . . The impact of the Legislature's remarkable action of carving out a new school district coterminous with a religious enclave must not be assessed in a vacuum but measured against history. For almost 40 years, ever since the landmark decision in *Brown v Board of Educ.* (347 US 483), government-sponsored segregation efforts have been unlawful (see, e.g., *United States v Scotland Neck Bd. of Educ.*, 407 US 484, 489-490 [carving out new school district from existing one impermissible because it impedes desegregation]; *compare*, Education Law §2590-b [3] [a] [vi] ["heterogeneity of pupil population" a criterion in creating local school districts]; *Mississippi*

> *Univ. for Women v Hogan*, 458 US 718 [gender-based admissions policy unconstitutional]). Against this historical backdrop, the "symbolic impact" (*Grand Rapids School Dist. v Ball*, 473 US, at 390, *supra*) of creating a new school district to serve the needs of a particular religious group cannot be overstated . . . The impasse between Monroe-Woodbury and the Satmarer concerned only special education services for disabled children. Nevertheless, the Legislature responded by creating a new public school district vested with *all* the powers of a union free school district, which are vast[, and pose] no legal impediment to the new district's operation of a public school program for nondisabled children if it chose to do so. Manifestly, the delegation of such power to the new district demonstrates that the legislation exceeded the problem that engendered it. (81 NY2d 518 at 537-538 (Kaye, J., concurring)).

In this context, the Legislature could certainly have taken more moderate measures to resolve the conflict between Village residents and Monroe-Woodbury, as observed by Judge Kaye in her concurrence below. Such alternative measures would still be available to the New York State Legislature should this Court not grant petitioners' writ for certiorari. As a result, review by this Court of this factually unique case is unnecessary.

3. This case is not the appropriate vehicle for reexamining the tripartite test of *Lemon v. Kurtzman*.

The *Lemon* test has served as a guide for courts to distill violations of the Establishment Clause which are

less than the actual establishment of a formal state religion (see, e.g., *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Aguilar v. Felton*, 473 U.S. 402 (1985); *School Dist. of City of Grand Rapids v. Ball*, 473 U.S. 373 (1985); *Lemon v. Kurtzman*, 403 U.S. 602). It represents not a mechanical means for analyzing Establishment Clause issues, but a distillation of principles which serve to forestall both the abuse of religion by political power, and the abuse of political power by religion. (See, *State v. Celmer*, 80 N.J. 405, 404 A.2d (1979); cf. *Oregon v. Rajneeshpuram*, 598 F.Supp. 1208 (D. Oregon 1984); see also, *Larkin v. Grendel's Den*, 459 U.S. 116 (1982)).

Notwithstanding, petitioners urge this Court to grant their petition for certiorari based, in part, on their perspective as to the questionable viability of the *Lemon* test. Should this Court, indeed, be inclined to formally inter or modify the *Lemon* test, respondents ask the Court to step back and consider whether this case truly represents the appropriate vehicle for such purpose. This case involves unique factual circumstances, and has limited future application.

Furthermore, respondents respectfully submit that, irrespective of what test is ultimately applied, the creation of a separate publicly-funded school district for an exclusive religious community whose religious precepts require separation from individuals who are not members of their faith violates the very core of constitutional prescriptions for the separation of church and state.

CONCLUSION

FOR ALL OF THE FOREGOING REASONS, THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED.

Dated: Albany, New York
October 29, 1993

Respectfully submitted,

JAY WORONA
(Counsel of Record)
PILAR SOKOL
16 Cayuga Street
Slingerlands, New York 12159
Tel. No. (518) 465-3474

Attorneys for Respondents

SUPREME COURT OF THE UNITED STATES

BOARD OF EDUCATION OF THE KIRYAS JOEL VILLAGE SCHOOL DISTRICT; BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT; and ROBERT ABRAMS, ATTORNEY GENERAL OF THE STATE OF NEW YORK, Petitioners, v. LOUIS GRUMET and ALBERT W. HAWK Respondents.	AFFIDAVIT IN OPPOSITION TO APPLICATION FOR EXTENSION OF STAY

STATE OF NEW YORK)
)
COUNTY OF ALBANY) ss.:

THOMAS SOBOL, being duly sworn, deposes and says:

1. I am Commissioner of Education of the State of New York and the chief executive officer of the state system of education and of the Board of Regents. As such, I am responsible for, *inter alia*, the general supervision of all public schools in the State.

2. I make this affidavit in opposition to appellants' application for a stay pursuant to Rule 23 of the Rules of

the Supreme Court of the United States against enforcement of the New York Court of Appeals' Order in the above-captioned matter, until final disposition on a petition for writ of certiorari by the United States Supreme Court.

3. The New York Court of Appeals' Order, entered July 8, 1993, affirmed the determination of the two lower courts that Chapter 748 of the Laws of 1989 establishing the Kiryas Joel Village School District (hereinafter also referred to as "KJVSD") is unconstitutional, in violation of the Establishment Clause of the First Amendment to the United States Constitution.

4. I am advised by my legal counsel that, if the application for an extension of the statutory stay is granted, the State Education Department will be required to continue to disburse federal funds and state aid to the KJVSD pursuant to the provisions of §§ 1411 and 1414 of the federal Individuals with Disabilities Education Act and §§ 3601 and 3602 of the New York State Education Law.

5. The continued disbursement of federal funds and state-aid to the KJVSD during the pendency of a petition for writ of certiorari before the United States Supreme Court creates unique problems because, if the determination of the New York State Court of Appeals is ultimately upheld and the district ceases to exist, there will be no means to recover federal funds and state-aid provided in contravention of the United States Constitution.

6. As the agency responsible for the educational welfare of all children within the State of New York, the State Education Department is fully prepared to assist the

Monroe-Woodbury Central School District to provide appropriate special educational services to all the children entitled to receive them from the Kiryas Joel Village School District.

7. In the event that the United States Supreme Court either decides not to grant the appellants a Writ of Certiorari or grants the Writ and ultimately affirms the decision of the New York State Court of Appeals, the Kiryas Joel Village School will cease to exist. Executing the decision of the New York State Court of Appeals at this time, during the summer months, will be far less disruptive to the majority of the children receiving educational and related services from the Kiryas Joel Village School District than would a closing at any other time during the school year. In addition, I am advised by my Coordinator of Educational Aids and Services, Gregory Illenberg, that if the Kiryas Joel Village School District is not dissolved during the summer, there would be major fiscal implications for the Monroe-Woodbury Central School District. If the district is not dissolved before September 1993, Monroe-Woodbury would have no access to the property tax revenues already collected by the Village of Kiryas Joel. (See affidavit of Gregory Illenberg at paragraphs 28-30).

8. During the 1991-92 school year, the Kiryas Joel Village School District reported 10.9 full-time resident students enrolled in its public school program with 10 children enrolled in its full-time summer program. Furthermore, according to the data provided by the Kiryas Joel Village School District, there were only 13 resident children enrolled full-time in the district's public school during the 1992-93 school year.

9. Based on the enrollment data submitted by the Kiryas Joel Village School District for the 1992-93 school year, if the Stay is denied, the Monroe-Woodbury Central School District would only be required to serve immediately in a full-time special education program, the small number of children currently enrolled in the Kiryas Joel Village School District's similar program.

10. Based on the enrollment data submitted by the Kiryas Joel Village School District for the 1992-93 school year, approximately 95 children are currently enrolled by their parents in the parochial schools located in the Village of Kiryas Joel who receive only supplementary special education services from the Kiryas Joel Village School District pursuant to the dual enrollment provision contained in New York's Education Law § 3602-c.

11. According to data submitted by the Kiryas Joel Village School District, the vast majority of those students enrolled in parochial schools who are receiving dual enrollment services are only receiving one (1) period of special education services per day.

12. For the foregoing reasons, appellants' application for a stay should be denied as it will not create a [sic] undue hardship on the Monroe-Woodbury Central School

District and because the most opportune time to make the necessary transition is now.

/s/ Thomas Sobol
Thomas Sobol

Sworn to before me this
21st day of July, 1993.

/s/ Karen Norlander [seal]
Notary Public

KAREN NORLANDER
Notary Public, State of New York
Qualified in Rensselaer County
Reg. No. 4787145
Commission Expires November 30, 1993

SUPREME COURT OF THE UNITED STATES

BOARD OF EDUCATION OF THE KIRYAS JOEL VILLAGE SCHOOL DISTRICT; BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT; and ROBERT ABRAMS, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Petitioners,

v.

LOUIS GRUMET and ALBERT W. HAWK

Respondents.

AFFIDAVIT

STATE OF NEW YORK)
)
COUNTY OF ALBANY) ss.:

GREGORY ILLENBERG, being duly sworn, deposes and says:

1. Since 1985, I have been the Chief of the Bureau of State Aided Programs at the State Education Department (hereinafter referred to as "SED"). As a result of an SED reorganization my current title is Coordinator of Educational Aids and Services. In my capacity as both Bureau Chief and Coordinator of Educational Aids and Services, I am responsible for the collection of pupil and financial data in support of state-aid claims and projections, and I

have an expertise in all matters of state-aid and school finance.

2. Pursuant to New York State Education Law § 215, school districts are required to file any and all reports that the Commissioner of Education may require.

3. In order to have received state-aid for the 1992-93 school year, to which public school districts are eligible, such public school districts were obligated to file pupil and financial data with SED pursuant to Education Law § 3609.

4. On November 24, 1992, pursuant to such statutory obligations, the Kiryas Joel Village School District submitted over the Technology Network Ties System, (SED's computer network) Form SA-100/19 entitled the "Basic Data Collection Document" (attached hereto as Addendum A).

5. This document provides the SED with required pupil and financial data in support of state-aid claims and projections.

6. The information which is contained in Form SA-100/19 was certified on October 1, 1992 by Abraham Wieder, President of the Board of Education of the Kiryas Joel Village School District as an accurate accounting of the pupil and financial data for the district (This document is attached as Addendum B).

7. After SED received the information contained in the SA-100/19, it produced a computer printout Form Number SA-464 which is entitled: "Three Year Trend Summary, District Pupil and Financial Data" (attached hereto as Addendum C).

8. The SA-464 for the Kiryas Joel Village School District dated December 10, 1992 was forwarded to the Kiryas Joel Village School District for purposes of correction and/or verification of the 1992-93 estimated data.

9. The Kiryas Joel Village School District, through its Business Manager, Joseph Hartman, reviewed the SA-464 and made four (4) corrections to the financial data but made no corrections to the pupil data.

10. Mr. Hartman signed and dated the SA-464 (attached hereto as the last page of Addendum C) on December 28, 1992 and mailed the document to the State Education Department which was received and date-stamped by the Department at 1:05 P.M. on January 4, 1993.

11. SED establishes a database using the verified data contained in the SA-464 for all public school districts eligible for state-aid pursuant to § 3602 of the New York State Education Law.

12. The SED database was used to produce the "1993-94 State Aid Projections" dated April 1993 Run Number SA939-4 (hereinafter referred to as "the SA939-4") in support of school aid legislation adopted by Chapter 57 of the Laws of the State of New York 1993.

13. Page 87 of the SA939-4 subtitled, "Public and Private School Excess Cost Aid For Children With Disabilities," (attached hereto as Addendum D) displays such data for the Kiryas Joel Village School District.

14. Addendum D is based on the data previously certified by the Kiryas Joel Village School District as

accurate and complete regarding its resident public school student population with disabilities.

15. Addendum D shows that during the 1992-1993 school year, there was a total of 13 resident students with disabilities who were enrolled as full time students in the Kiryas Joel Village School District. (See also Addendum C, lines 33-35 column 1992-93 Est. which shows the 13 students by grade level.)

16. Form SA-464 reports 29 non-resident students enrolled in the district (See Addendum C, line 6 column 1992-93 Est).

17. Pursuant to Education Law § 3202 entitled "Public Schools Free to Resident Pupils; Tuition from Nonresident Pupils," the above mentioned 29 children are the responsibility of their respective school districts of residence.

18. Pursuant to Education Law § 3602-c entitled: "Apportionment of Moneys to School Districts for the Provision of Services to Pupils Attending Nonpublic Schools," the Kiryas Joel Village School District is also responsible for providing special education programs to all children both resident and nonresident enrolled in parochial schools within the boundaries of the district.

19. For aid payable in the 1992-93 school year, the Kiryas Joel Village School District submitted Claim Form SA-129H (attached hereto as Addendum E), for services provided pursuant to Education Law § 3602-c.

20. The SA-129H data reported an average daily attendance of 83.638 pupils in dual enrollment receiving public school services one (1) period per day plus an

average daily attendance of 9.491 pupils in dual enrollment receiving public school services two (2) periods per day and an average daily attendance of 2.011 pupils in dual enrollment receiving public school services three (3) periods per day. The sum of such average daily attendance for all pupils in dual enrollment in the Kiryas Joel Village School District is 95.14.

21. On December 3, 1992, Mr. Hartman prepared Federal form PD-1 entitled "Number of Pupils with Disabilities Provided Special Education," and which was signed by the Kiryas Joel Village School District's Superintendent of Schools, Mr. Steven Benardo (attached hereto as Addendum F).

22. On Addendum F, the Kiryas Joel Village School District reports that it serves 140 resident children with disabilities. This count includes students in dual enrollment who attend parochial schools within the district and only thirteen (13) resident children who are enrolled in its public school.

23. On the SA-464 form, the Kiryas Joel Village School District reported to SED enrollment of 192 students in the district (See Addendum C lines 1-4 column 1992-93 Est.).

24. If the Kiryas Joel Village School District ceases to exist, pursuant to the order of the New York State Court of Appeals, the Monroe-Woodbury Central School District, the school district to which the children of the Village of Kiryas Joel would then belong, would be required to absorb the 13 resident full-time students of the Kiryas Joel Village School District and provide any

requested dual enrollment services to the remaining children currently attending parochial schools in the Kiryas Joel Village School District.

25. The twenty-nine (29) nonresident students enrolled full-time in the Kiryas Joel Village School District's public school would continue to be the responsibility of their respective school districts of residence which would be required to provide the special education services recommended by their local school district committee on special education.

26. For purposes of dual enrollment, the cost of providing special education services to the non-resident students enrolled in the parochial schools in the Village of Kiryas Joel, would remain the fiscal responsibility of those school districts where such children reside whether or not the Kiryas Joel Village School District continues.

27. The Kiryas Joel Village School District presently leases its public school building and has reported lease expenditures of $212,960 for the 1993-94 school year (See Addendum C line 267).

28. Pursuant to Article 13 of the New York State Real Property Tax Law, real property owners are obligated to pay school taxes to the school district where the property is located as identified on the assessment role used for the levy.

29. In the present situation, if the Stay is granted, the real property in the Village of Kiryas Joel will remain on the assessment role of the Kiryas Joel Village School District for taxes to be levied in September of 1993 for the 1993-94 school year.

30. Thereafter, if the decision of the New York State Court of Appeals is upheld and the Monroe-Woodbury Central School District becomes responsible for the education of resident children of the Village of Kiryas Joel, the Monroe-Woodbury Central School District will have no access to the property tax revenues from the real property located in the Kiryas Joel Village School District for the duration of the 1993-94 school year. This is so because the Kiryas Joel Village School District would have already collected such taxes and, to the best of my knowledge, there is no mechanism to recoup any additional school tax revenues in the event the Kiryas Joel Village School District ceases to exist.

/s/ Gregory Illenberg
Gregory Illenberg

Sworn to before me this
21st day of July, 1993.

/s/ Karen Norlander [seal]
Notary Public

KAREN NORLANDER
Notary Public, State of New York
Qualified in Rensselaer County
Reg. No. 4787145
Commission Expires November 30, 1993

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

LOUIS GRUMET, individually and as Executive Director of the New York State School Boards Association, Inc.; ALBERT W. HAWK, individually and as President of the New York State School Boards Association, Inc.; and the NEW YORK STATE SCHOOL BOARDS ASSOCIATION, INC.,

Plaintiffs,

- against -

BOARD OF EDUCATION OF THE KIRYAS JOEL VILLAGE SCHOOL DISTRICT; AND BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT,

Defendants.

AFFIDAVIT OF DR. ISRAEL RUBIN

Index No. 1054-90
RJI No. 0190-021649

Assigned Justice: Hon. Lawrence E. Kahn

STATE OF OHIO)
) ss.:
COUNTY OF CUYAHOGA)

ISRAEL RUBIN, being duly sworn, deposes and says that:

1. I was born in Rumania, came to the United States in 1947, and subsequently received a Ph.D. in Sociology at the University of Pittsburgh in 1965.

2. In 1966, I was appointed Associate Professor of Sociology at the Cleveland State University in Cleveland, Ohio and in 1974 I was promoted to Professor of Sociology.

3. During 1960-1961, I studied the community of Satmar, which was then concentrated in the Williamsburg section of Brooklyn. In 1972 my book SATMAR: AN ISLAND IN THE CITY which contains a sociological analysis of the group was published by Quadrangle Books. In 1988 I restudied the community, including Kiryas Joel located near Monroe, New York, on [sic] area Satmarer began to settle in 1974 and later incorporated as the village of Kiryas Joel. An updated edition of SATMAR is now being prepared, presently under contract to be published by Peter Lang Publishers.

4. During the last thirty years (25 of these at Cleveland State), I have taught a variety of courses in Sociology, including an occasional course directly concerned with Jewish traditional culture. In the general courses I have frequently used the case of Satmar to illustrate a variety of theoretical issues of concern to our discipline, including such subjects as continuity/change and independence training of children.

5. Due to my extensive study of this community and my published material, I am considered an expert on SATMAR. In this capacity I have over the years addressed and consulted with various organizations on aspects of Satmar culture and behavior.

6. I am making this affidavit at the request of attorneys for plaintiffs, for the purpose of providing general information on Satmar Hasidic culture and religion, for

the record in the above-entitled action, not in support of the case being litigated. The information given is based on my knowledge of and familiarity with the community.

7. Religion and its preservation in the form interpreted and practiced in Satmar, occupies a central place in virtually all matters of importance.

8. The Satmarer comprise a Hasidic religious community traditionally focused around its leader called the Rebbeh rather than around a particular residential area. In our case, the history of the community can more accurately be conceived of as the history of the original Satmar leader, Reb Yoel Teitelbaum. Reb Yoel actually molded the members of varied origin into a distinct community and served as its leader from the community's inception in 1904-1905 until his death in 1979. After his death, Reb Yoel was succeeded by his nephew Reb Moshe Teitelbaum.

9. The Satmar leadership today is considerably less centralized than it was under the leadership of Reb Yoel, less absolute than it was a generation ago, and thus more flexible when it comes to dealing with local situations. However, the present Rebbeh officially inherited the same mandate his uncle had, namely to be the ultimate decision-maker in all matters of concern to the Satmar community.

10. Unlike thirty years ago when the bulk of Satmar in New York State was concentrated in the Williamsburg section of Brooklyn, the Satmar community now has three additional localities in which a significant number of

Satmarer reside. Specifically, there are numerous Satmarer in Brooklyn's Borough Park section, in Monsey, Rockland County, and in Kiryas Joel, Orange County.

11. The local leaders of each sub-unit, especially those involved in running the local school systems, have been given a high degree of autonomy. They enjoy flexibility to address local conditions, as long as their decisions do not explicitly violate norms regarded as absolutely sacred. To be sure, Reb Moshe occasionally does step in to exercise his official role as supreme decision-maker.

12. Because of its peculiar character as a Satmar townlet, Kiryas Joel has a unique situation. The Rebbeh has appointed his oldest son, Reb Aron Teitelbaum, to be the Rov, or town rabbi. Therefore, he plays a significant role in the leadership process, which is complicated by the fact that a large number of residents are dissatisfied with the appointment.

13. Some residents of Kiryas Joel have expressed their dissatisfaction with the appointment of Reb Aron Teitelbaum as town rabbi by showing loyalty to the founding Rebbeh Joel Teitelbaum's widow (also a Kiryas Joel resident). Others have withdrawn from active involvement in community affairs. The more militant opponents have created a school system of their own, thus defying both the Rebbeh and the Rov who have bitterly fought against the rival system.

14. Resistance to pressures for acculturation emanating from the surrounding sociocultural system serves as the chief rationale for the Satmar effort to maintain a separate community.

15. The private educational network run by Satmar is regarded as the chief instrument through which Satmar's culture is transmitted to future generations. It is this central goal which underlies both theory and practice in these schools, because they are meant to serve primarily as a bastion against undesirable acculturation, as a training ground for Torah knowledge in the case of boys, and in the case of girls, as a place to gather knowledge they will need as adult women. With the reported exception of the public school for the handicapped Satmarer do not intend their schools to be the chief instrument of preparing one for his/her occupational role.

16. Secular education, although growing in importance over time, is regarded to be of limited significance beyond its role of assisting the eventual necessity to make a living and to support a family. Consequently, higher education, except in technical matters such as training in computer-related and language skills, is regarded as unnecessary, nay undesirable. In fact, prevention of undesirable acculturation is the main reason for having their own school system, instead of sending their children to public school where they would be exposed to the influence of peers and teachers whose life styles clash with that of Satmar. By the same token, secular subjects other than those involving technical training are feared for their possible contents of ideas subversive to Satmar culture. This, incidentally, is also the reason for the ban against television. For, unlike the Old-Order Amish, Satmarer do not object to technology as such (see computers, for example). What they object to are all potential agents of undesirable acculturation.

17. Although secular studies are more readily offered and more easily accepted by Satmarer girls because girls, by tradition, are not taught religion to the extent boys are, secular studies still have their limitations. Textbooks are censored in advance and library book borrowing is forbidden because of the uncensored content of such books. Nonacademic subjects such as art, music and physical education are absent, and education is terminated at the end of high school.

18. Prior to and outside of marriage, Satmar men and women are discouraged from looking at or talking to each other, for fear that it might produce "impure thoughts" and may eventually lead to violation of the sexual code. Hence, males and females are segregated from early in life when young children of opposite gender are prohibited to play together.

19. Basically, it is religion which underlies the practice of gender-segregation (see discussion below). In spite of the fact that abstention and celibacy are negatively valued in the culture, sex has always been and continues to be a tabooed subject. Its practice is encouraged in the privacy of the marital chamber, while publicly (even in the home) any show of affection between men and women, or any verbal mention of the subject, in [sic] considered highly improper.

20. The private schools are, of course, among the places where gender segregation is strictly observed. Here additional factors come into play. First, Torah (sacred teaching) is to be studied with a "pure mind", not accompanied by sinful thoughts bound to arise when in the presence and vicinity of members of the opposite

gender. Then Satmarer frequently justify their practice by pointing to the continuous proliferation in the surrounding society, especially within the public schools, of premarital sexual activity and the accompanying rise of teenage pregnancy rates, generally recognized as constituting a severe social problem. For Satmarer even the thought of their youth being influenced in this direction produces images of horror and abomination.

21. However, I have recently been in contact by telephone with several informants I trust. They all reported that in the case of the handicapped, boys and girls do attend together. They also pointed out that here, unlike in their private schools, occupational preparation is a main instructional objective. As said, this comes to me long distance (albeit from what I consider reliable sources), and is not based on direct observation.

22. I respectfully request that the factual assertions set forth herein be accepted by the Court as accurate to the best of my knowledge.

/s/ Israel Rubin
Israel Rubin, Ph.D
Professor of Sociology
Cleveland State University

Sworn to before me this
30 day of April, 1991

/s/ Lisa M. Swaney [seal]
Notary Public

LISA M. SWANEY
Notary Public, State of Ohio
My Commission Expires Feb. 9, 1995

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

LOUIS GRUMET, individually and as Executive Director of the New York State School Boards Association, Inc.; ALBERT W. HAWK, individually and as President of the New York State School Boards Association, Inc.; and the NEW YORK STATE SCHOOL BOARDS ASSOCIATION, INC.,

Plaintiffs-Respondents,

-against-

NEW YORK STATE EDUCATION DEPARTMENT; THOMAS SOBOL, as Commissioner of the New York State Education Department; NEW YORK STATE BOARD OF REGENTS; EDWARD V. REGAN, as New York State Comptroller; EMANUEL AXELROD, as District Superintendent of Orange-Ulster BOCES; BOARD OF EDUCATION OF THE KIRYAS JOEL VILLAGE SCHOOL DISTRICT; BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT,

Defendants-Appellants.

AFFIDAVIT OF HON. THOMAS SOBOL, COMMISSIONER OF EDUCATION IN SUPPORT OF MOTION TO VACATE STATUTORY STAY

Albany County Clerk
Index No. 1054-90
RJI No. 01-90-021649

Assigned Justice: Hon. Lawrence E. Kahn

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

THOMAS SOBOL, being duly sworn, deposes and says:

1. I am Commissioner of Education of the State of New York and the chief executive officer of the state system of education and of the Board of Regents. As such, I am responsible for, *inter alia*, the general supervision of all public schools in the State.

2. I make this affidavit in support of plaintiffs' motion to vacate the automatic stay, pursuant to CPLR §5519(a)(1), of the Judgment and Order of Supreme Court, Albany County, entered February 10, 1992, which declared Chapter 748 of the Law of 1989 establishing the Kiryas Joel Village School District (hereinafter also referred to as "KJVSD") unconstitutional.

3. I am advised by my legal counsel that, if the statutory stay is not vacated, the State Education Department (hereinafter also referred to as "SED") will be required to continue to disburse state-aid to the KJVSD pursuant to §§3601, 3602 of the Education Law. The district will generate additional state-aid if its immediate plan to purchase a building is approved. (See paragraphs 5 through 8).

4. The continued disbursement of state-aid to the KJVSD during the pendency of its appeal creates unique problems for the state because, if the lower court decision is ultimately upheld, there will no means to recover state-aid from a district that ceases to exist .

5. I am advised by staff from SED's Division of Facilities Planning that the KJVSD plans to expand its instructional program to include a regular kindergarten.

6. Consistent with this request, SED staff is reviewing plans submitted by the KJVSD of a facility it proposes to purchase to conduct regular kindergarten classes.

7. The purchase of a school building by the KJVSD would automatically generate additional state-aid for the district pursuant to §3602(6) of the Education Law. This additional state-aid will greatly increase the funds currently available to the district.

8. Furthermore, the expansion of the KJVSD instructional program to include a regular kindergarten intensifies SED's need to monitor closely the district to ensure that public funds are not expended to further religious purposes.

9. For the foregoing reasons, plaintiffs' motion should be granted and the stay vacated.

/s/ Thomas Sobol
Thomas Sobol

Sworn to before me this
5th day of March, 1992.

/s/ Jay Worona [seal]
Notary Public

JAY WORONA
Notary Public, State of New York
Qualified in Albany County
No. 4785288
Commission Expires Nov. 30, 1993

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

LOUIS GRUMET, individually and as Executive Director of the New York State School Boards Association, Inc.; ALBERT W. HAWK, individually and as President of the New York State School Boards Association, Inc.; and the NEW YORK STATE SCHOOL BOARDS ASSOCIATION, INC.,

Plaintiffs-Respondents,

-against-

NEW YORK STATE EDUCATION DEPARTMENT; THOMAS SOBOL, as Commissioner of the New York State Education Department; NEW YORK STATE BOARD OF REGENTS; EDWARD V. REGAN, as New York State Comptroller; EMANUEL AXELROD, as District Superintendent of Orange-Ulster BOCES; BOARD OF EDUCATION OF THE KIRYAS JOEL VILLAGE SCHOOL DISTRICT; BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT,

Defendants-Appellants.

AFFIDAVIT OF ROBERT LAVERY

Albany County Clerk
Index No. 1054-90
RJI No. 01-90-021649

Assigned Justice: Hon. Lawrence E. Kahn

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

ROBERT LAVERY, being duly sworn, deposes and says:

1. I am Senior Architect in the Division of Facilities Planning of the New York State Education Department (hereinafter also referred to as "SED"). I have served in this position since 1987. As such, I review the building plans for facilities that public school districts in New York State seek to construct or purchase for use as school buildings. I am personally familiar with the facts set forth herein.

2. On or about December 6, 1991, I received a visit from Dr. Steven M. Benardo, Superintendent of Schools of the Kiryas Joel Village School District (hereinafter also referred to as "KJVSD").

3. During the visit, and in ongoing conversations, Dr. Benardo indicated that the KJVSD would like to purchase an existing school building constructed a few years ago for use by nonpublic school students. The KJVSD wishes to purchase this building for the purpose of providing kindergarten instruction to nonhandicapped children in addition to providing special education services to handicapped children.

4. At present, the KJVSD is leasing a facility for its special education program.

5. During ongoing conversations on this matter, Dr. Benardo has also indicated the district's future plan to construct a facility. According to him, the KJVSD seeks to build or purchase school buildings rather than lease, in order to obtain building aid from the state.

6. A school district receives no additional state-aid when it leases a school building. However, the purchase of an existing facility and/or the construction of a new one generates building aid pursuant to §3602(6) of the Education Law.

7. During his visit on or about December 6, 1991, Dr. Benardo submitted for my review the building plans of the facility the KJVSD wishes to purchase, which I determined did not meet SED's traditional building standards.

8. Upon information and belief, SED has never had a request to approve a building site to house nonhandicapped kindergarten students in an existing district that otherwise educates only students with disabilities. Therefore, the plans are presently under review to determine whether a variance may be granted.

9. If a variance is granted, the KJVSD would receive approval to purchase the building which would generate additional state-aid.

10. Dr. Benardo has indicated that the district's goal is to purchase the building as soon as possible for use as a public school.

/s/ Robert Lavery
Robert Lavery

Sworn to before me this
6th day of March 1992.

/s/ Jay Worona [seal]
Notary Public

JAY WORONA
Notary Public, State of New York
Qualified in Albany County
No. 4785288
Commission Expires Nov. 30, 1993